

BEFORE THE FLORIDA JUDICIAL QUALIFICATIONS COMMISSION

INQUIRY CONCERNING A  
JUDGE, No. 03-14

\_\_\_\_\_ /

**MOTION TO COMPEL PRODUCTION**

Pursuant to Rule 12(a), Florida Judicial Qualifications Commission Rules, and Rule 1.380, Florida Rules of Civil Procedure, Special Counsel moves to compel the Honorable James E. Henson to produce certain previously requested documents, and in support says:

1. On January 16, 2004, Special Counsel served on Judge Henson its first request for production, a copy of which is attached as Exhibit A.

2. Request numbers 1, 2, 3, 4, and 6 ("the Requests") ask for:

1. All documents relating or referring to your representation of Diana M. Jimenez.

2. All documents relating or referring to your representation of Jerry Lee Thompson.

3. All documents relating or referring to your representation of Hector Rodriguez, Jr.

4. All documents relating or referring to your representation of Kathryn M. [Corneliussen].

6. All communications with Robert Nesmith relating or referring to your representation of Diana M. Jimenez.

3. Judge Henson objected to these requests on the basis of attorney-client privilege. A copy of Judge Henson's response to Special Counsel's first request for production is attached as Exhibit B.

4. On March 5, 2004, Special Counsel wrote to Judge Henson's counsel requesting these documents. A copy of Special Counsel's letter is attached as Exhibit C. As explained in Special Counsel's letter, the documents responsive to the Requests necessarily include documents filed with the court and communications with third parties, which are both inherently non-privileged. Special Counsel further explained in its letter that all documents relating or referring to Henson's representation of Diana M. Jimenez and Kathryn M. Corneliussen are non-privileged because both individuals waived the privilege.

Particularly, Ms. Jimenez waived the attorney-client privilege by filing a motion for postconviction relief on grounds of ineffective assistance of counsel regarding Judge Henson's services. See Arbelaez v. State, 775 So.2d 909, 917 (Fla. 2000) (defendant waives attorney-client privilege by filing a motion for ineffective assistance of counsel). Ms. Corneliussen waived the attorney-client privilege by filing a complaint with the Florida Bar on December 23, 2002 against Judge Henson regarding his services. See Fla. Stat. § 90.502(4)(c) ("[t]here is not lawyer-client privilege under this section when [a] communication is relevant to an issue of breach of duty by the lawyer to the client ... arising from the lawyer-client relationship"). A copy of Ms. Jimenez's motion is attached as Exhibit D. A copy of Ms. Corneliussen's complaint is attached as Exhibit E.

5. Judge Henson still has failed to produce documents responsive to the Requests.

WHEREFORE, Special Counsel requests the Chair of the Hearing Panel enter an order compelling the Honorable James E. Henson to produce the documents at issue within five days.

SMITH HULSEY & BUSEY

By \_\_\_\_\_

Mark Hulsey

E. Lanny Russell

Florida Bar Number 0038041

Florida Bar Number 303097

225 Water Street, Suite 1800

Jacksonville, Florida 32202

(904) 359-7700

(904) 359-7708 (facsimile)

Special Counsel for the Florida

Judicial Qualifications Commission

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by mail to Kirk N. Kirkconnell, Esq., Kirkconnell, Lindsey, Snure & Yates, P.A., 1150 Louisiana Avenue, P.O. Box 2728, Winter Park, Florida 32790, and John R. Beranek, Esq., Ausley & McMullen, P.A., 227 South Calhoun Street, P.O. Box 391, Tallahassee, Florida 32301, on this \_\_\_\_ day of March, 2004.

---

Attorney

JQC - 03-14 - Motion to Compel Production.DOC